

IN RE: LATEX GLOVE LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

CIVIL ACTION

CASE CODE 243

CASE MANAGEMENT ORDER NO. 3

A CASE MANAGEMENT CONFERENCE having been conducted by the Special Master on April 28, 1998 in the presence of those counsel listed on Exhibit A and a subsequent working session having been held May 15, 1998 in the presence of those counsel listed on Exhibit B and it appearing that all pending and future New Jersey state cases involving claims for personal injury allegedly arising from allergic reactions to latex gloves have been assigned to the Hon. Marina Corodemus for pretrial management by Order of the Supreme Court of New Jersey dated March 16, 1998; and

WHEREAS, Judge Corodemus has appointed Joyce Usiskin, Esq. to serve as Special Master for this litigation; and

WHEREAS a procedure for the transmittal of files, the stay of proceedings and the filing of new complaints with the requirement that all complaints contain no more than one plaintiff or household of related plaintiffs have been provided by Case Management Order #1 dated March 30, 1998; and

WHEREAS Case Management Order #2 dated April 30, 1998 lifted the stay imposed on pleadings and motions and provided that all discovery Orders of any transferring courts are vacated;

and there being good cause for the entry hereof;

IT IS ON THIS _____ day of July 1998 ORDERED that the following provisions and procedures govern latex litigation in this state.

I. General Guidelines

1. All counsel to this action are required to cooperate and confer in good faith to resolve any disputes prior to bringing the matter before the Court or Special Master. Civility and courtesy in all communications between counsel is expected.

2. All previous orders of this Court are incorporated herein.

II. Cases, Captions and Correspondence

1. Pursuant to the New Jersey Supreme Court's March 16, 1998 Order and this Court's March 30, 1998 Order, all cases pending as of July 1, 1998 listed in the attached Appendix 1 and all future actions where a claim is asserted for allergic reactions to natural rubber latex medical gloves shall be centralized before this Court for pretrial purposes and shall be governed by this and subsequent orders of this Court. Appendix I shall be the official case list.

2. The cases have been centralized, not consolidated and each case retains its own Middlesex County docket number. All pleadings, motions and other court documents shall designate the Middlesex docket number and shall include in the caption, "Civil Action-Latex Litigation."

3. All general correspondence must reference Latex litigation below the letterhead and date.

4. All specific correspondence must reference Latex litigation as well as the case name and docket number and shall be directed to all counsel in that case. This includes correspondence

that relates to motions, discovery or other matters relating to one or more latex cases.

5. Copies of all general correspondence (non-case specific administrative or scheduling matters) directed to the court or to the special master shall be provided to all liaison counsel and thereafter distributed to all counsel. All general correspondence shall include the designation GENERAL CORRESPONDENCE on the first page above the reference to Latex Litigation.

III. Conference Procedures

1. Case management conferences or parts thereof may be transcribed. Any party desiring a transcript may order one directly from the stenographer. Any order for a transcript shall include an order for a copy to be sent to Special Master Joyce Usiskin.

2. Counsel appearing at each case management conference must sign an attendance sheet must be familiar with this matter and must not schedule other matters for the date of the conference. All counsel must remain for the entire conference.

3. All counsel are required to comply with the provisions of each case management order, whether or not her or she was in attendance at the conference.

4. The Special Master is empowered to hold case conferences, status conferences and settlement conferences.

IV. Filing and Service Requirements

1. Each complaint filed after March 16, 1998, regardless of county of origin, shall contain an allegation of venue. Each complaint shall also contain in the Case Information Statement Form (CIS), and displayed in the caption, Case Code Number 243. Regardless of venue allegations, all new complaints shall be filed and venued in Middlesex County for all pretrial case management and discovery and directed to the Deputy Clerk, Civil Records, Middlesex County Courthouse, One JFK

Square, New Brunswick, New Jersey 08903-0964.

2. New actions involving claims for allergic reactions to natural rubber latex medical gloves improperly filed in other counties shall promptly be transferred to this Court, in accordance with New Jersey Supreme Court's March 16, 1998 Order.

3. When filing or serving any pleading or motion including supporting affidavits, briefs, appendices for a particular case, the papers shall be served upon all parties involved in that case and upon liaison counsel for plaintiffs and for defendants.

4. Certification of service is to be made in an abbreviated form, incorporating by reference the official counsel list with the date of the list being utilized. No copies of counsel lists shall be attached to any motion.

5. A party shall serve the Court, Special Master, liaison counsel and/or other parties to the action so that the individuals set forth herein receive service by the same time.

V. Motion Practice

1. Substantive Motions:

a) All motions related to substantive issues filed hereinafter shall require leave of Court. Permission to file such motion and a return date may be obtained by telephoning the Special Master. Opposition papers and replies, if necessary, must comply with the time requirements set forth in R.1:6-3 of the Rules Governing the Courts of New Jersey, unless otherwise specified by the Special Master or the Court's Law Clerk.

b) All motions before the court require counsel to **certify** to the best of his or her knowledge that the issues therein have not been addressed by any other court in this jurisdiction or any other jurisdiction in the United States involved in latex litigation. If such issues have been

addressed, then a copy of the Order and the opinion from such other court shall be attached to the motion papers. If the matter has been filed but is still pending, then the attorney must list the court, the case and docket number and the status of that motion.

2. Discovery Motions:

All discovery motions, and all motions to dismiss based on product identification, are to be heard by the Special Master. Unless otherwise directed, such motions shall be returnable on the first motion day of each month. No permission need be obtained for the filing of discovery motions. Section XVII of this Order shall govern the procedures for filing motions to dismiss based on product identification. Generally, there will be no oral argument on discovery motions unless requested by the Special Master or unless a party requests permission to be heard on a motion and the Special Master grants such request. The Special Master may, at her discretion, schedule a conference call on the return date for the motion in order to hear from all sides prior to determining such motions. The Special Master will issue recommendations containing her rulings on such motions.

3. Appeals from Recommendations:

a) The parties will have ten (10) business days to appeal to the Court from the Special Master's recommendations. Such appeals shall be taken by filing a motion with the Court, within ten business days from the issuance of the recommendations, to appeal/overturn the recommendation of the Special Master. Absent a timely appeal from the Special Master's recommendations, the recommendations shall have the same force and effect as a Court order.

b) To the extent a party appeals from a recommendation issued by the special master, the recommendation shall be stayed pending the final determination of such appeal.

4. Copies:

a) One copy of all motions (substantive or discovery) shall be filed with the Clerk, Middlesex County Civil Records and be accompanied by the required filing fee as prescribed by the New Jersey Rules of Court. An additional copy need be presented only If a filed copy is to be returned, and a stamped self addressed envelope must accompany the filing.

b) **The original** of all motions (both substantive and discovery) with all supporting papers, form of Order or form of Recommendation is to be filed with the Special Master along with a stamped, self addressed envelope for the return of the filed Order or Recommendation. No additional copies need be filed.

c) Certifications of service shall be in the form set forth in IV, para. 4.

d) The original of any papers in opposition are to be filed with the special master, along with a self addressed stamped envelope if an alternate form of order or recommendation is provided. No additional copies need be filed.

5. Multi-Case Motions:

All motions must contain a caption of a particular case. If the motion pertains to more than one action, the motion shall include the docket numbers of all cases to which the motion is applicable but need only contain the caption to one such case. That case shall be considered the lead case for that motion. Motions shall also contain the legend “In Re Latex Litigation Case Code 243”.

VI. Organization of Parties

1. Division into three (3) groups. Counsel for all parties shall be divided into three initial groups: (i) plaintiffs; (ii) defendant manufacturers/distributors, and (iii) trade associations.

Each group shall elect a team leader, or spokesperson for that group. Such counsel shall be known as “lead counsel” for the group.

2. Cooperation on Common Contentions. The court encourages common contentions to be briefed and argued by no more than one representative from each group. Each group must select a lead counsel for the briefing and arguing of common contentions and this person does not have to be the same person chosen as group leader or chosen to argue a different motion.. 3 .

Individual or Separate Action Preserved. No party shall be barred from taking a position on any issue before the court or before the special master divergent from its group.

Any counsel who disagrees with the group or with lead counsel may make written and oral argument and otherwise act separately, as appropriate. But such counsel shall not repeat the same arguments, questions or actions of lead counsel.

4. Miscellaneous

The communication, transmission or dissemination of information among the plaintiffs’ counsel, or among defendants’ counsel or among the various groups & committees formed for management purposes shall be deemed privileged and shall not be deemed a waiver of the attorney-client privilege, joint defense privilege, the protections afforded by the work product doctrine, the protections afforded material which is prepared for litigation or any other privilege to which a party may be entitled. Any cooperative efforts, as described above, shall not in any way be used against any of the parties, be cited as purported evidence of conspiracy, wrongful action or wrongful conduct and shall not be communicated to the jury.

5. Committees:

- a) The parties may create committees or other cooperative arrangements as they see

fit. These committees are not official or court authorized bodies..

b) The court shall appoint committees of counsel for various tasks as the need arises. Initially, there shall be formed a **Discovery Steering Committee** consisting of one representative from each of the three groups listed above. Each group shall designate a member by September 1, 1998. The duties of the steering committee shall be to:

I. Draft a set of generic merits interrogatories directed to each group of parties.

ii. Set a deposition schedule so as to obviate the need for duplication.

iii. Send out all deposition notices.

VII. Liaison Counsel

1. Liaison Counsel. Liaison counsel have been appointed by the Court for all plaintiffs and for all defendants.

I. *Plaintiffs' Liaison Counsel:*

Brian Drazin, Esq.
Drazin & Warshaw
25 Reckless Place
PO Box 8909
Red Bank, New Jersey 07701-8909

ii. *Defendants' Liaison Counsel:*

Diane P. Sullivan, Esq.
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, New Jersey 07068

2. Duties of Liaison Counsel. Liaison counsel shall have the following duties and responsibilities:

I. Receive correspondence, pleadings, motions, orders and other documents from the Court, Special Master, or from any party, and distribute the same to the plaintiffs or to the defendants in a timely fashion;

ii. Supply any new counsel with copies of all prior orders, forms and other materials required to participate in this litigation.

iii. Coordinate presentations to the Court, Special Master of the various groups' administrative positions on matters arising during pre-trial proceedings;

iv. Advise the Special Master of new cases and new parties and maintain an updated counsel list and provide each party and the Special Master with updated monthly counsel lists. Such lists shall be headed with the title and date:

v. Conduct meetings of counsel to coordinate the activities of the groups;

vi. Delegate tasks to group leaders as required,

vii. Perform such other administrative duties as may be required by the Court.

3. Expenses of Liaison Counsel

Liaison counsel shall be entitled to reimbursement of expenses for all administrative services which are required to be performed by them for the benefit of group members. These expenses shall be equitably apportioned among the members of the group. Any agreement among group members establishing the reimbursement policy, the expenses or services covered shall be operative without any prior court approval.

All disputes regarding reimbursement issues shall be resolved within the group, in the first instance. If resolution within the group is not possible, then the court shall set one or more dates for consideration of any such issues.

VIII. Pro Hac Vice Admission

1. An attorney seeking to appear pro hac vice shall apply by formal notice of motion, supporting certification or affidavit and proposed form of Order, in compliance with the Rules of the Courts of New Jersey. The moving papers must show compliance with all requirements of R. 1:21-2 and with the following additional requirements.

a. Pro hac vice counsel may not be designated as trial counsel. A pro hac vice admitted attorney may try the case, but may not be the “designated” trial counsel.

b. All pleadings and correspondence to the Court must be submitted by New Jersey counsel. No proceedings will be adjourned because of the unavailability of pro hac vice counsel.

2. Attorneys representing plaintiffs must certify that any retainer arrangements with clients do not and will not violate any of New Jersey’s contingency fee rules.

3. All out of state attorneys seeking admission to represent a defendant must provide a statement as to prior involvement with any corporate entities represented. Specifically, counsel must submit a statement as to whether the counsel to be admitted is so involved with policy and management decisions as to be called as a witness in this litigation.

4. Counsel admitted pro hac vice shall be required to make the annual payment to the Ethics Financial Committee and the New Jersey Lawyers Fund for Client Protection.

IX. Multiple Counsel

1. Where a party is represented by more than one counsel of record, that party shall designate to Liaison Counsel and to the Special Master, the name and address of the single counsel to be the recipient of all notices, communications and pleadings. That counsel will be responsible

for notifying co-counsel of all such matters.

X. Responsive Pleadings in Initial Actions

1. All actions listed in Appendix 1 shall be referred to hereinafter as the “Initial Actions”.

2. A defendant, to the extent they have yet to do so shall be required to respond to any complaint filed in the Initial Action within sixty (60) days from the date of the entry of this Order.

3. Discovery related to Initial Action cases shall proceed in accordance with the terms of this Order as set forth infra.

XI. Pleadings and Service in Cases Filed After Initial Actions (“New Claims”)

1. All plaintiffs’ filing future complaints (“New Claims”) shall file the complaint in accordance with the terms of this Order including the provision regarding venue as set forth in Section IV supra.

2. Upon the filing of any future complaint (“New Claims”) defendants’ liaison counsel and plaintiffs’ liaison counsel must be notified of the new claim, the parties named and the name and address of the plaintiffs’ counsel. Defendants’ liaison counsel shall then provide any new defendant to the latex litigation with a copy of this order. To the extent the plaintiff’s counsel who filed the New Claim has not previously been a party to the latex litigation plaintiffs’ liaison counsel shall provide that counsel with a copy of this order. The defendants’ product identification questionnaire, to be answered by plaintiffs; attached as Appendix 2 and plaintiffs’ product identification interrogatories and document requests, to be answered by defendants, attached as Appendix 3 shall automatically be deemed served upon a party’s initial receipt of this order. Appendices 2 and 3 are

not required to be served thereafter.

3. Service of the complaint shall be made in accordance with the New Jersey Rules of Court. If, however, a domestic corporate defendant has previously responded to a complaint in the latex litigation, the complaint may be served on the corporate defendants at its principal place of business via certified mail with a copy sent to the defendant's counsel of record.

4. A defendant shall be required to respond to all New Claims in accordance with the New Jersey Rules of Court.

5. Upon receipt of each New Claim filed, defendants' liaison counsel shall be responsible for circulating to all counsel a discovery schedule, consistent with the terms of this Order.

6. Discovery related to any New Claims filed shall proceed in accordance with the terms of this Order as set forth infra.

XII. Amended Pleadings

1. In the case of the filing of any subsequent pleading by way of amended complaint, third or fourth party complaint, no party in the case who has already answered and against whom no new allegations are made, need file any additional answer. The last answer filed by each party shall be deemed an answer to all future amended pleadings which have no new claims against that party.

2. It shall be the obligation of the party filing amended, third or fourth party pleadings to provide a cover letter to existing parties, copies to the court, identifying all new claims and all new parties brought into the action by the new pleadings.

3. All proposed amendments must be submitted to the court on motion in accordance

with the provisions for Motion Practice set forth in Section V.

XIII. Dismissal of Improperly Joined Parties

1. All defendants who are not proper legal entities for suit or those defendants who were mistakenly named in an action may be dismissed by agreement or by court order. The order of dismissal to be entered based upon agreement shall be in the form attached as Appendix 6.

Any defendant seeking dismissal shall make such a request to the plaintiff involved providing information to plaintiff which supports its contention that it is not a proper party to the action.

Defendants who seek dismissal from any count in the complaint shall use the same procedure.

2. Plaintiffs shall have thirty (30) days from receipt of the information set forth in Paragraph 1 above to provide a written response to the defendant of its decision whether or not to dismiss said defendant. Such response must specify the reasons for denying defendant's request.

3. Thereafter, that defendant may file a motion to dismiss in accordance with the New Jersey Rules of Court and the terms of this Order. The motion shall be filed within forty-five (45) days from the date the defendant receives the plaintiffs' written response regarding the defendant's request for dismissal. The filing of the motion set forth herein shall stay the defendant's obligation to file a responsive pleading until the disposition of the motion. To the extent a defendant wishes to avail itself of the requirements of this Section the Court shall not enter a judgment of default against said defendant.

XIV. Discovery

1. Discovery shall be bifurcated and shall consist of two phases: (I) product identification discovery and (ii) causation, liability and damages discovery.

2. Written Discovery. If a defendant herein is also a defendant in the MDL action and such

defendant has produced documents and information or will be producing documents and information responsive to interrogatories and/or document requests in the MDL action, it is this Court's desire to utilize that discovery without duplication as much as possible consistent with due process. Further, the Court recognizes that many parties who are defendants in the individual New Jersey latex glove actions have previously responded to discovery requests in New Jersey cases and in other jurisdictions. Therefore:

a) Any defendant who chooses to rely on responses to interrogatories and/or document requests provided to the MDL plaintiffs' depository or provided in a previous New Jersey latex glove product liability case must identify the documents produced therein. Subject to the provision set forth on page 16, paragraph #4, the defendants subject to appropriate safeguards as agreed to by the parties or directed by the Court shall provide access to any latex plaintiffs' counsel who is precluded from utilizing the plaintiffs' MDL depository for a portion or all documents demanded because of ineligibility, prohibitive cost or other justifiable reason. Defendants may provide access to the documents by permitting counsel to examine and copy such material at defendants' offices or by electronic transmission or by other acceptable methods of production. A defendant who relies upon responses served and documents produced in prior or other litigation must, to the extent such responses are supplemented, provide plaintiff with a copy of the supplemental written interrogatory responses and written responses to document requests. Subject to New Jersey law, nothing in this paragraph shall prevent a party from moving to compel responses to interrogatories, request for the production of documents or other discovery requests which have previously been withheld on the ground of privilege or work product doctrine.

b) The product identification questionnaire directed to plaintiff attached as

Appendix 2 to this Order is hereby approved and adopted by the Court and is deemed served in accordance with the terms of this Order by defendants upon plaintiffs. However, a plaintiff shall not be obligated to respond to the questionnaire if such plaintiff has previously provided adequate answers to product identification interrogatories in a particular case. Any dispute as to the adequacy of prior responses shall be submitted to the special master by motion.

c) The product identification interrogatories and document requests directed to defendants attached as Appendix 3 to this Order are hereby approved and adopted by the Court and deemed served in accordance with the terms of this Order by plaintiffs upon defendants.

3. Depositions.

a). Notices .: Initial notices of depositions shall be served at least twenty (20) days prior to the date contained in the first deposition notice.

b) Duplication: It is the Court's intention to preclude duplicative or repetitive examination of witnesses. Witnesses shall not be subject to multiple appearances or prolonged multi-day depositions. A number of defendants' company or former company employees have already been deposed in the MDL action and/or various state court actions; others will be deposed in such actions. This testimony must be made available to all plaintiffs, whether MDL parties or non-MDL parties. The parties, therefore, shall adhere to the following procedures prior to deposing the defendants' witnesses:

i All requests for Depositions shall be referred to the Discovery Steering Committee. If a defendant wishes to rely on the witnesses', employee's, former employee's, agent's or representatives' prior deposition that defendant shall provide the steering committee with a statement indicating whether or not the noticed witness has appeared and has been examined by

adverse counsel in the MDL actions and/or, in other state court latex glove litigation actions. The statement shall also include the witness' full name and current address, dates of prior testimony, case caption, docket number and identities of participating counsel at each prior deposition, and the witness' present relationship with the defendants.

ii In cases where a defendant intends to rely upon a prior deposition of its witness, employee, former employee, agent or representative and that witness, employee, former employee, agent or representative was previously deposed, the defendants shall provide copies of the prior deposition transcript to the committee unless such deposition transcript is available in the Plaintiffs' MDL Document Depository and all requesting parties have access to that transcript. In that case the prior deposition shall be binding as if taken in the instant action and admissible to the extent permitted by the rules of the court and rules of evidence. Further deposition of such witnesses will be permitted only upon agreement of the parties or order of the Court, and then only upon a showing of good cause and specific need and shall be limited to matters not otherwise covered in prior depositions of such witnesses.

c) Cross-Noticing of Depositions.

i Cross-notice of all depositions for any latex glove case pending in any federal or state court shall be sent to each liaison counsel for transmission to all parties. Such deposition shall be conducted and the transcript and exhibits from such deposition shall be deposited with the discovery steering committee in accordance with section XIV, paragraph 3, subsection ii.

ii. The deposition cross-notice shall be served at least fifteen (15) days prior to the deposition date. To the extent a cross-noticed deposition is adjourned or rescheduled a separate deposition cross-notice need not be served. However, counsel who received the cross-notice must

be provided the date, time and location of the deposition through liaison counsel..

4. Production of Documents - Defendants. Inasmuch as there has been and will be voluminous document production in the MDL, it is the Court's desire to utilize that production without duplication to the extent such documents can be accessed by all plaintiffs whether MDL counsel represents them or not and further provided that the cost of retrieving these documents are not prohibitive. Pursuant to MDL Case Management Order Nos. 7 and 7A, the MDL plaintiffs established a document depository. All documents produced to the document depository bear a distinctive Bates number. Further, the depository has imaged or will be imaging on CD-ROM discs the documents produced by the national defendants.

5. Production of Documents - Plaintiffs. Plaintiffs shall, within sixty (60) days of filing a complaint, or by Aug. 30, 1998 for the Initial Action cases to the extent not previously produced, produce copies to liaison counsel of all prior medical history records, employment records, disability/social security records, income information, insurance information and other medical provider records as may be relevant to their claims in their possession or their counsel's possession, and also produce to defendants purchase orders or invoices relating to identification of the glove(s) alleged to have caused injury. Plaintiffs shall have a continuing duty to supplement this response when and if additional documents are obtained.

6. Authorizations for Release of Records. Plaintiffs who file a New Claim will be required to identify to defendants all known treating physicians and other healthcare providers and execute releases for prior medical history records, employment records, disability/social security records, insurance information, income information and other medical provider records as may be relevant to their claims, in the forms of Appendix 4, within sixty (60) days of filing the complaint.

By Aug. 30, 1998 plaintiffs who filed an Initial Action case and who have yet to do so shall be required to execute and provide to liaison counsel for defendants form releases for prior medical history records, employment records, income information, disability/social security records, insurance information and other medical provider records as may be relevant to their claims, which forms are attached as Appendix 4. Defendants must supply each plaintiffs' counsel a copy of the records pertaining to their client which are obtained pursuant to these authorizations and releases. Plaintiffs shall reimburse defendants for their pro rata share of the gathering and copying of such records. Appropriate claims of confidentiality, or privilege are not waived and may be raised to the Court in specific cases on motion.

7. Corporate Disclosure Form. Defendants shall, within sixty (60) days from the date of service of the complaint, or by Aug. 30, 1998 for the Initial Action cases provide responses to the corporate disclosure form which is attached as Appendix 5.

XV. Product Identification Discovery

1. By September 30, 1998 all plaintiffs who filed an Initial Action shall respond to the product identification questionnaire attached as Appendix 2. Those plaintiffs who have already answered such interrogatories adequately need not complete such questionnaire. Disputes as to the adequacy of such answers shall be presented to the special master by motion.

2. For all New Claims involving plaintiffs' law firms which are not set forth in Appendix 1 the plaintiffs shall respond to the product identification questionnaire attached as Appendix 2 within sixty (60) days from the date plaintiffs' counsel received a copy of the order for New Claims. For all New Claims involving plaintiffs' law firms which are set forth in Appendix 1 the plaintiffs

shall respond to the product identification questionnaire attached as Appendix 2 within sixty (60) days from the date of the filing of the complaint. Plaintiffs' responses to the product identification questionnaire shall be served upon defense liaison counsel and upon all counsel in the individual case.

3. By October 30, 1998 in the Initial Action cases the defendants shall respond to the product identification interrogatories and document requests form attached as Appendix 3. For all New Claims the defendants shall respond to the product identification interrogatories and document requests form attached as Appendix 3 thirty (30) days after receiving plaintiffs responses to defendants product identification questionnaire attached as Appendix 2. To the extent a defendant has previously adequately responded to a plaintiffs' product identification interrogatories and document requests which were served in any New Jersey latex litigation such defendant need not complete Appendix 3 in that particular case and that defendant is only required to respond to those questions set forth in Appendix 3 which relate to the plaintiff specific case, if that defendant has yet to do so.

4. Between September 30, 1998 and December 8, 1998 those parties who filed an Initial Action shall conduct, as necessary, the product identification depositions of third party witnesses, and, upon a showing of good cause and permission from the Special Master, the product identification deposition of the plaintiff. For all New Claims within sixty (60) days after defendants' respond to Appendix 3 the parties shall conduct, as necessary, the product identification depositions of third party witnesses, and upon a showing of good cause and permission from the Special Master, the product identification deposition of the plaintiff.

5. The end of the time period allocated for the deposition of third parties, and possibly

the plaintiff related to product identification, shall hereinafter be referred to as the close of product identification discovery.

XVI. Dismissal as to Manufacturers/Distributors Regarding Product Identification

1. The parties have agreed and the Court has adopted the so-called “bright-line” test to be used to cause the dismissal of manufacturer or distributor/supplier defendants from specific actions. The objective has been to develop a test that will be relatively easy to apply in good faith by plaintiffs’ and defendants’ counsel. Since this process will not preclude a motion for summary judgment pursuant to R. 4:46 on these issues at the conclusion of merits discovery, only clear-cut situations should result in dismissal of particular defendants at this time.

2. At the close of product identification discovery or at any appropriate time prior thereto, the parties shall confer in good faith to discuss the partial or full dismissal of any defendant from this lawsuit who was improperly joined. The parties shall decide whether, based on the evidence: (a) a particular defendant’s latex gloves were supplied to any institution at a time when plaintiff was present at such institution; and (b) if so, whether a particular defendant’s latex gloves were used either by plaintiff or by others at such institution in a manner in which such exposure reasonably could cause harm. If such evidence does not exist for (a) and (b) above, the plaintiff will agree to the voluntary dismissal of said defendant subject to the following condition: if for a period of one year following dismissal or ninety (90) days after the completion of merits discovery, whichever occurs later, evidence of such use or exposure to defendant’s latex gloves which reasonably could have caused harm to plaintiff is developed and which was not reasonably known by or disclosed previously to plaintiff, the dismissed defendant will agree voluntarily to return to the action by stipulation without asserting the statute of limitations as a defense assuming that the initial

filing was timely. If after one year following the dismissal of a defendant on product identification grounds or ninety (90) days after completion of merits discovery, whichever is later, a dismissed defendant who has not been requested to return to the record of this case, upon request and notice to the plaintiff, the Court may enter an Order dismissing the defendant with prejudice.

3. If counsel agree on a dismissal of a defendant, an appropriate form of order shall be prepared and submitted to the Court containing language consistent with paragraph one of this section of this order. If counsel agree that no dismissal is appropriate, no further action shall be required. If the parties do not agree, any defendant may file a motion before the Special Master no later than thirty (30) days after the plaintiff's denial of the defendant's request for dismissal from the action.

4. The Special Master shall review such motion and shall make a written recommendation to the parties and the Court.

5. If a party does not agree with the Special Master's recommendation, that party may appeal the recommendation to the Court in accordance with the terms of this Order and the Rules of the Courts of New Jersey.

6. The "bright-line" test enumerated above will not preclude the later filing of a motion to dismiss or for summary judgment premised on product identification after the close of product identification discovery.

XVII. Causation, Liability and Damages Discovery

1. On November 6, 1998 at 10:00 a.m. the Special Master will conduct a case management conference to discuss causation, liability and damages discovery ("merits discovery").

2. Prior to the November 6, 1998 conference the parties shall confer to discuss the

parameters of and a timetable for the completion of merits discovery.

3. Seven (7) days prior to the November 6, 1998 conference the plaintiffs shall submit to the Special Master an explanation concerning the mechanics and functioning of the Plaintiffs' MDL Document Depository, which shall include, ability to access documents in the depository, the cost of access to the depository and issues related to confidentiality and privilege.

XVIII. Next Case Management Conference

The next case management conference will be held on Friday, November 6, 1998 at 10 a. m. at the Office of the Special Master, 3rd floor, Middlesex County Administration Building, New Brunswick, New Jersey.

BY THE COURT:

HONORABLE MARINA CORODEMUS, J.S.C.

Dated: _____